

COPY

1 Nicholas A. Carlin, State Bar No. 112532
2 David M. Given, State Bar No. 142345
3 Spencer M. Martinez, State Bar No. 206337
4 PHILLIPS, ERLEWINE & GIVEN LLP
5 One Embarcadero Center, Suite 2350
6 San Francisco, CA 94111
7 Tel: 415-398-0900
8 Fax: 415-398-0911
9
10 Attorneys for Plaintiffs

E-filing**WDB**

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

10 TOMMY DUNBAR and JAMES
11 GANGWER,

12 Plaintiffs,
13 vs.

14 LUCASZ GOTTWALD (aka Dr. Luke),
15 AVRIL LAVIGNE, KASZ MONEY
16 PUBLISHING, AVRIL LAVIGNE
PUBLISHING LLC, ALMO MUSIC CORP.
RCA RECORDS, and APPLE, INC.,

17 Defendants.

C 07 : 2758

) Case No. 07-2758
COMPLAINT FOR DAMAGES FOR
COPYRIGHT INFRINGEMENT

JURY TRIAL DEMANDED

19 Plaintiffs allege:

20 1. This is a civil action, for which a jury trial is demanded, for damages for
21 copyright infringement in connection with defendants' unauthorized copying and subsequent
22 use, performance and exploitation of protected elements of plaintiffs' copyright.

23 **JURISDICTION AND VENUE**

24 2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
25 1338(a). The alleged unlawful acts and violations described below were in part conceived,
26 carried out and made effective within the Northern District of California. All of the defendants
27 named herein transact or have transacted business within this District.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) (2) & (3) as well as pursuant to 28 U.S.C. § 1391(c).

THE PARTIES

4. Plaintiff **TOMMY DUNBAR** is an individual residing in Sacramento, California.

5. Plaintiff JAMES GANGWER is an individual residing in Richmond, California.

6. Defendant LUCASZ GOTTWALD (aka "Dr. Luke") is an individual who, on information and belief, resides in New York City and, at all relevant times herein, was doing business throughout the State of California.

7. Defendant AVRIL LAVIGNE is an individual who, on information and belief, resides in Los Angeles, California and, at all relevant times herein, was doing business throughout the State of California.

8. Defendant KASZ MONEY PUBLISHING is a business entity, whose form and place of organization is unknown to plaintiffs at this time which, at all relevant times herein, was doing business throughout the State of California

9. Defendant AVRIL LAVIGNE PUBLISHING LLC is a Nevada limited liability company which, at all relevant times herein, was doing business throughout the State of California

10. At all times relevant herein, defendant ALMO MUSIC CORP. was, and still is, a “doing business as” designation of Universal Music Group, Inc., a Delaware corporation, with its principal place of business in Santa Monica, California. At all relevant times herein, ALMO MUSIC CORP. was doing business throughout the State of California.

11. At all times relevant herein, defendant RCA RECORDS was, and still is, a “doing business as” designation of Bertelsmann Music Group LLC, a Delaware limited liability company, with its principal place of business in New York City. At all relevant times herein, RCA RECORDS was doing business throughout the State of California.

12. At all times relevant herein, defendant APPLE, INC. was, and still is, a California corporation with its principal place of business in Cupertino, California.

13. Plaintiffs are informed and believe, and thereon allege, that each defendant named in this complaint is in some manner responsible for the wrongs and damages as alleged below, and in so acting was functioning, at least at times, as the agent, servant, partner, alter ego and/or employee of the other defendants, and in doing and/or not doing the actions mentioned below was acting within the course and scope of his or her or its authority as such agent, servant, partner, and/or employee with the permission and consent of the other defendants. Further, all acts herein alleged were approved of and ratified by each and every other defendant.

CLAIM FOR COPYRIGHT INFRINGEMENT

(Against All Defendants)

14. In or about 1979, plaintiffs jointly authored the musical composition "I Wanna Be Your Boyfriend." The composition is original to plaintiffs and is copyrightable subject matter under U.S. law.

15. In 1979, the copyright in "I Wanna Be Your Boyfriend" was registered with the U.S. Copyright Office, registration number PA-36-223.

16. Plaintiffs are the sole owners of all right, title and interest in and to the foregoing copyright. The composition has been published, performed and otherwise exploited by plaintiffs, or by others under plaintiffs' authority or license, in conformity with the Act.

17. At no time have Plaintiffs authorized defendants, or any of them, to republish, perform, create derivative works based on or otherwise exploit all or any portion of "I Wanna Be Your Boyfriend."

18. In or about April 2007, defendants, and each of them, infringed plaintiffs' copyright in "I Wanna Be Your Boyfriend" by, *inter alia*, publishing and widely releasing a musical composition entitled "Girlfriend," as a single and as one of the tracks embodied on a phonorecord entitled AVRIL LAVIGNE – THE BEST DAMN THING. "Girlfriend" was copied in part from Plaintiffs' copyrighted composition "I Wanna Be Your Boyfriend."

19. Defendants continue to infringe plaintiffs' copyright by, *inter alia*, creating and distributing phonorecords in various formats, including but not limited to compact discs and

1 digital downloads, embodying or incorporating performances of the infringing work
2 "Girlfriend."

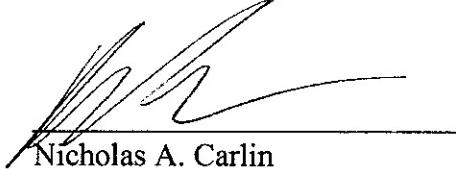
3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiffs pray for judgment as follows:

- 5 1. Plaintiffs' damages and defendants' profits in an amount to be ascertained or, in
6 the alternative, statutory damages against defendants and each of them in the amount of
7 \$150,000 for each infringement;
- 8 2. Plaintiffs' reasonable attorneys' fees and costs of suit;
- 9 3. Prejudgment interest on any monetary award; and
- 10 4. Such other and further relief as this Court may deem just.

11 Dated: May 25, 2007

PHILLIPS, ERLEWINE & GIVEN LLP

12 By: 

13 Nicholas A. Carlin
14 Attorneys for Plaintiffs
15

16 **JURY DEMAND**

17 Plaintiffs hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of
18 Civil Procedure.

19 Dated: May 25, 2007

PHILLIPS, ERLEWINE & GIVEN LLP

20 By: 

21 Nicholas A. Carlin
22 Attorneys for Plaintiffs
23
24
25
26
27
28